



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 177902

PRELIMINARY RECITALS

Pursuant to a petition filed on November 11, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the La Crosse County Department of Human Services regarding FoodShare benefits (FS), a hearing was held on December 8, 2016, by telephone. The record was held open upon completion of the hearing to allow the agency to submit documentation that its witness referenced and read aloud from during the hearing. The additional documentation was received by the close of business on December 8, 2016 and marked as Exhibit 22.

The issue for determination is whether the petitioner's appeal request was timely.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.

2. On June 29, 2016, the agency sent a FoodShare Overpayment Notice to the petitioner which stated that she had received \$514 benefits to which she was not entitled for the time period December 1, 2015 to April 30, 2016. The Overpayment Notice further stated that the petitioner had a right to file an appeal *by September 27, 2016* if she believed that the agency's decision was wrong. (Exhibit 5.)
3. The petitioner received the Overpayment Notice and communicated with the agency by telephone on July 29, 2016 and on least one other occasion prior to the appeal deadline. On July 29, 2016, the petitioner completed an eligibility review and asked for information regarding the overpayment. The agency worker referred the petitioner's overpayment inquiry to a second agency worker who handles overpayment claims. On or about August 8, 2016, the petitioner spoke with the second agency worker and discussed repayment arrangements and requirements. (Testimony of [REDACTED], Testimony of petitioner, Exhibit 22.)
4. On November 11, 2016, the petitioner visited the agency, inquired about the overpayment, and submitted a fair hearing request. (Exhibits 1 and 22).

DISCUSSION

An administrative law judge can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FoodShare benefits (FS) must be filed within **90** days of the date of that action. 7 C.F.R., § 273.15(g). During the hearing, the petitioner testified that she received the overpayment notice, contacted the agency, and was told by an agency worker to "ignore the payments" and further instructed that "somebody would take it out of [her] FoodShare. . ." I am persuaded that the petitioner and the agency worker discussed the manner in which the agency planned to recoup the FS overpayment and that the petitioner may have been understandably confused by the information she received. However, the petitioner did not testify or otherwise establish that the agency advised her to not file an appeal of the overpayment finding itself.

The negative action in this case was the overpayment notice dated June 29, 2016 and the deadline to file an appeal was September 27, 2016. The petitioner's appeal was filed 136 days after the date of the negative action (and 46 days after the appeal deadline). Because the petitioner's appeal was untimely, I have no jurisdiction to consider the merits of the case.

Finally, I note that even if the petitioner had timely appealed the overpayment notice, the petitioner would likely not have prevailed. She acknowledged that she received FS benefits and that she inadvertently didn't timely call in to the agency to report a change in her income. The petitioner also credibly explained that she has been doing her best to work hard, that she has worked multiple jobs, and that despite her best efforts, she has struggled to find and maintain steady employment over the past years. I do not doubt her testimony in that regard; however, the laws governing the FS program do not allow a waiver of overpayments under such circumstances.

CONCLUSIONS OF LAW

The petitioner for review was untimely and there is thus no jurisdiction to consider the merits of this case.

THEREFORE, it is

ORDERED

The petition for review is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 4th day of January, 2017

\s _____
Teresa A. Perez
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 4, 2017.

La Crosse County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability